

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 10 1998

IN THE MATTER OF:

DOCKET NUMBER: 96-03751

COUNSEL: NONE

HEARING DESIRED: YES

[REDACTED]

[REDACTED]

Applicant requests that he be given an increase in his disability rating, from 60 percent to a more appropriate level based upon a condition not considered during his disability processing. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Charles E. Bennett, Mr. Vaughn E. Schlunz, and Mr. Walter J. Hosey considered this application on 28 January 1998, in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.


CHARLES E. BENNETT
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. AFBCMR Ltr Forwarding Advisory Opinions

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE, TEXAS

7 Apr 97

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPD
550 C Street West Ste 06
Randolph AFB TX 78150-4708

SUBJECT: Application for Correction of Military Records, [REDACTED]

REQUESTED ACTION: Applicant requests an increase in his disability rating, from 60 percent to a more appropriate level based upon a condition not considered during his disability processing.

FACTS: On 2 Mar 78, the applicant was removed from the Temporary Disability Retired List (TDRL) and permanently retired from the Air Force by reason of physical disability, following seven years, three months, and 20 days of active service, with a 60 percent disability rating.

DISCUSSION: The purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their grade, office, rank or rating. Those members who are separated or retired by reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. The mere presence of a physical defect or condition does not qualify a member for disability retirement or discharge. As indicated above, the physical defect or conditions must render the member unfit for duty. The decision to conduct a Medical Evaluation Board (MEB) is made by the medical treatment facility providing health care to the member. Eligibility for disability processing is established by an MEB when that board finds that the member may not be qualified for continued military service.

The applicant contends that he had never had a back X-ray during his treatments and examinations for his 2 Nov 72 motorcycle accident and that the X-ray should have been done. The applicant believes that his current back problems stem from the accident which rendered him unfit due to his leg injury, and that his compensable percentage should be increased based upon that assumption. This contention is met by two issues addressed below:

First, the applicant did not show any evidence of back injury resulting from the motorcycle accident which would have brought into question the applicant's fitness for continued military service—based on that condition, standing alone (i.e., apart from the femoral defect). As explained in the opening paragraph to this section, the fact that a condition exists does not render a military member unfit; and at the time of his treatment and disability processing, there was no evidence of an unfitting back condition. The applicant was evaluated based on the only condition which warranted disability processing at the time of his initial TDRL placement. The fact that the Department of Veteran's Affairs (DVA) has recently granted the applicant service connection for his back condition does not invalidate the Air Force determination made in February 1975, based on his condition at that time. Further, after careful review of the AFBCMR case file we differ with the DVA's assumption that the applicant's back condition was brought on by the motorcycle accident. This assumption appears to be inconsistent with the preponderance of evidence when the entire medical record is considered. Documentation within the AFBCMR case file shows that the member had a back injury causing the applicant severe pain less than five months prior to his motorcycle accident. Additionally, there is a medical entry in June, 1968 documenting a complaint of back pain.

We are not questioning the DVA's decision of granting service connection for the applicant's back condition. Indeed, as previously pointed out, there is evidence that the applicant had had back problems while he was on active duty. At that time, however, they were not so serious as to be unfitting or to warrant disability processing. The Air Force and DVA disability systems operate under separate laws. Under the AF system (Title

9603751

18 Jun 97

96-03751

MEMORANDUM FOR AFBCMR

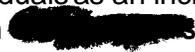
FROM: BCMR Medical Consultant
1535 Command Drive, EE Wing, 3rd Floor
Andrews AFB MD 20762-7002

SUBJECT: Application for Correction of Military Records 

Applicant's entire case file has been reviewed and is forwarded with the following findings, conclusions and recommendations.

REQUESTED ACTION: The applicant was removed from the Temporary Disability Retired List (TDRL) and permanently retired with 60% Disability Rating (DR) on 2 Mar 78 after serving a total of 7 years, 3 months, 20 days on active duty. He now applies requesting that his DR be raised retroactive to the date of his retirement for additional disability relating to his accident in 1972 that led to his retirement and which was not found at time of his medical disposition, constituting what he considers a "gross medical error" and an "unjust...determination and award of only 60% DR".

FACTS: Applicant was involved in a motorcycle accident in which he was struck by a Japanese National vehicle in Nov 1972 while stationed in Japan. He suffered a severe fracture of his left upper leg bone (femur) which subsequently failed to heal and was the reason for his TDRL placement and eventual retirement. He was found in May 1996 to have evidence of mild compression fracture of his 12th thoracic vertebral body and rather extensive degenerative arthritic changes and disc disease throughout the lower spine. He feels these changes are secondary to the MVA of 1972 and that they should have been detected and rated at the time of his disability determination. He claims that x-rays were never taken of his spine after the accident, and there are no medical records to show this was ever done. He did, however, have x-rays of the lower spine in August 1972 when he was hospitalized for a week with back pain after moving some heavy furniture, and these were normal. The records indicate that the applicant met a Medical Evaluation Board on 28 Aug 73, and his history then reflected back pain which was not further evaluated, nor was this done on subsequent reevaluations when he continued to note the back pain on the medical history form. He was referred to the Informal Physical Evaluation board on 10 Sep 73, placed on the TDRL and maintained there until he was permanently retired with 60% disability as noted above. At the initial and subsequent reviews for continuation on the TDRL and even at permanent retirement, applicant fully concurred with the assessment and compensation awarded.

Even assuming the minimal compression fracture noted **some** 8 years later was present at the time of his TDRL assignment, in order for it to have been found unfitting, it, alone, would have had to limit performance of his normal duties, an unlikely circumstance considering he has not been found to have significant back or leg problems prior to 1996. Such minimal compression changes are fairly commonly seen in otherwise asymptomatic individuals as an incidental finding with or without an antecedent history of injury. As pointed out in  review, the mere presence of a defect is not necessarily unfitting for

966 3751